



Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

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January 18, 2013

David Kennedy
Federal Highway Administration
610 East 5th Street
Vancouver, WA 98661

RE: Application No: MT4010917 NOW-2002-90536-MTH
Applicant: David Kennedy, Federal Highway Administration
Waterway: Tenmile Creek (Section 3, T9N, R5W),
Lewis & Clark County, MT

Dear Mr. Kennedy:

The Montana Department of Environmental Quality (DEQ) has reviewed your application for 401 Water Quality Certification. The following is the Department's **final** determination:

Description of the Proposed Project:

Reconstruction of 6.3 miles of Rimini road about 6 miles West of Helena, Montana. The reconstruction will also involve permanent filling of 0.43 acres of wetlands and 2,142 linear feet of stream impacts to Tenmile Creek.

401 Water Quality Certification General -

Montana Water Quality 401 Certification derives its jurisdiction from Section 401 of the Federal Clean Water Act. It is a federal/state cooperative program that increases the role of the state in decisions regarding the protection of natural resources. It gives the state a broad authority to review proposed activities in and/or affecting state waters and, in effect to deny or place conditions on federal permits or licenses that authorize such activities if the proposed action is not consistent with all components of the state water quality standards that were adopted to protect, maintain, and improve the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses. The components of the standards consist of the beneficial use or uses of a waterbody, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular waterbody, and a nondegradation policy. In the event beneficial uses, such as aquatic habitat or aquatic life are unavoidably impacted or lost, conditions of the 401 certification may require the applicant to provide compensatory mitigation for the impacts or losses.

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Citation - Montana Water Quality Act (or Federal Water Quality Act) MCA 75-5-101
Policy:

(1) conserve water by protecting, maintaining and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry,

Citation - Montana 401 Certification Rule 17.30.105

(a) deny certification for any activity which will violate any effluent limitation or water quality standard stated in or developed pursuant to ARM Title 17.30;

Citation - Montana Surface Water Quality Standards And Procedures ARM 17.30.622
Classification Standards (or Federal Standards)

(1) Waters classified A-1 are to be maintained suitable for drinking, culinary and food processing purposes, after conventional treatment for removal of naturally present impurities and maintained suitable for bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agriculture and industrial water supply.

401 Water Quality Certification - Specific Conditioning –

“Waters classified A-1 are to be maintained suitable for drinking, culinary and food processing purposes, after conventional treatment for removal of naturally present impurities and maintained suitable for bathing, swimming and recreation; growth and propagation of non-salmonid fishes and associated aquatic life, waterfowl and furbearers; and agriculture and industrial water supply.”

“No increases are allowed above naturally occurring concentrations of sediment or suspended sediment are allowed except as permitted in 75-5-318, MCA.

Based on the preceding criteria, it is DEQ’s opinion, the David Kennedy Federal Highway Administration project as proposed, in the US Army Corps of Engineers and DEQ joint public notice of October 31, 2012, will result in a permanent loss of wetlands, temporary impacts to stream function and the water quality treatment and aquatic life functions they provide. This loss will contribute to not maintaining the waters suitable for the beneficial uses designated in this classification, unless the following conditions are implemented:

1. Consultation requirements:

- A. Within 30 days of the US Army Corps issuance of the project 404 permit a wetland and stream mitigation plan, including a five year monitoring plan for channel change areas, must be submitted to DEQ and the Montana Department of Fish, Wildlife and Parks (FWP) for approval.
- B. Within 30 days of the US Army Corps issuance of the project 404 permit DEQ and FWP needs to be contacted (Robert Ray, Watershed Protection Section, DEQ (406) 444-5319 and Trevor Selch, Fisheries Habitat Bureau, FWP, (406) 444-5686) to determine what water quality monitoring efforts will be required and then continue this consultation until DEQ and FWP approves the monitoring plan.
- C. Final stream channel designs must be approved by DEQ and FWP prior to construction of the new channel.
- D. A Stream Restoration Specialist, with construction oversight authority, must be present during most of the channel restoration construction.

2. All channel change areas:

- A. Riparian/wetland vegetation impacts should be avoided and/or minimized.
- B. Native vegetation should be planted in the disturbed areas.
- C. Native material should be used in construction of the new channels.

3. Bridge Crossings:

- A. Bridge decks should be designed so deck drainage does not directly discharge into state waters and the discharge should enter a retention basin after leaving the deck.
- B. Hydraulic deflection structures (barbs) are not acceptable in the vicinity of bridges. However, channel cross vanes are acceptable.

4. Riprap Areas:

- A. Riprap shall be vegetated (except directly under bridge decks). No geotextile fabric should be used to bed the rock. Soil should be placed in the voids of the rock with native vegetation placed in the soil. Approximately 12 plants (native willow and other species)

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per lineal foot should be randomly placed in the riprap from the low water to bankfull elevation.

B. Riprap should be appropriately sized and approximate the Montana Department of Transportation's class 2 or 3 sizing, unless larger sizing can be hydrologically justified.

C. To minimize riprap encroachment to the stream, bridge abutment riprap should be designed to curve around the abutments, not extended up or down stream.

D. Riprap placed in the water along the toe of the installation should have an irregular shape, to help deflect hydraulic energy and provide some fisheries habitat.

5. Drainage structures/features:

A. All road ditches that drain directly into state waters should have a retention basin at or near the discharge point.

B. Cross drainage culverts should be placed along the highway to allow for a riparian buffer between them and the receiving state water.

6. Erosion Control:

A. Appropriate erosion Best Management Practices (BMPs) must be installed to reduce temporary erosion associated with construction activities.

Do not hesitate to contact me if you have questions (406) 444-3639 psubinna@mt.gov or Jeff Ryan (406) 444-4626 jeryan@mt.gov.

Sincerely,

Paul Skubinna
Bureau Chief
Water Protection Bureau
Department of Environmental Quality

cc: Todd Tillinger, COE; Stephanie McCary, COE
Toney Ott, EPA; Jim Martin, EPA
Beau Downing, FWP; Jenny Sika, FWP
Mark Wilson, USFWS; Mike McGrath, USFWS